

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

FILED
ACTIONS & PROCEEDINGS

SEP 22 2009

ERIE COUNTY
CLERK'S OFFICE

**THE NEW YORK STATE
COMMISSION OF CORRECTION,**

Petitioner,

NOTICE OF PETITION

-against-

Index No. 2009-011216

TIMOTHY B. HOWARD, Individually and
in his capacity of Sheriff of
Erie County, New York,

Respondent.

PLEASE TAKE NOTICE, that upon the annexed Petition of Thomas A. Beilein, Chairman of the New York State Commission of Correction, verified on the 21st day of September, 2009, and upon the supporting papers attached hereto, an application will be made to this Court, to be held at the courthouse thereof, located at the New York State Supreme Court, Erie County, 50 Delaware Avenue, Part 32, Buffalo, New York, on the 22nd day of October, 2009, at 9:30 a.m./~~p.m.~~ of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to Article 4 of the CPLR and New York State Correction Law section 46(4) directing the Respondent as follows:

1. to comply with 9 NYCRR §7040.3 by assigning inmates to proper housing in accordance with the limitations and conditions of the Maximum Facility Capacity for the Erie County Holding Center; to wit, inmates may not be detained in the facility's holding areas for periods longer than that designated in the Commission's Maximum Facility Capacity;
2. to comply with 9 NYCRR §7005.6(a) by providing each inmate, upon admission to the facility and at facility expense, with an issue of personal health care items, including but not limited to soap, a toothbrush, toothpaste, a drinking cup, toilet paper and a bath towel;
3. to comply with 9 NYCRR §7005.9(a) by providing each inmate, upon admission and at facility expense, with an issue of clean bedding in good condition;
4. to comply with 9 NYCRR §7013.8(a) by conducting an initial screening and risk assessment of each inmate upon admission, and upon completion promptly placing such inmate in a housing unit designated for classification purposes;
5. to comply with 9 NYCRR §7002.9(a) by preparing and distributing to each prisoner, upon admission, a written copy of the facility rules and information;

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6. to comply with 9 NYCRR §7006.3(a) and (b) by developing written rules of inmate conduct, which shall include all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures;
7. to comply with 9 NYCRR §7006.3(c) by providing a copy of the written rules of inmate conduct to each inmate upon admission to the facility;
8. to comply with 9 NYCRR §7006.7(b) by providing an inmate administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer;
9. to comply with 9 NYCRR §7006.7(c) by conducting a review of any such administrative segregation within 24 hours of confinement, by the chief administrative officer, to determine if continued confinement is warranted;
10. to comply with 9 NYCRR §7008.3(a) by providing each inmate of the Erie County Holding Center an opportunity for two hours of visitation each week, with each visit lasting at least 30 minutes;
11. to comply with 9 NYCRR §7008.3(b) by establishing and publishing a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week;
12. to comply with 9 NYCRR §7008.5(a) by permitting any person who presents adequate proof of identity, with the inmate's consent, to visit such inmate, subject to the limitations of 9 NYCRR Part 7008;
13. to comply with 9 NYCRR §7028.2(b) by permitting all inmates to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR Part 7028;
14. to comply with 9 NYCRR §7032.4(a) by providing any inmate incarcerated in the Erie County Holding Center access to the facility's grievance program;
15. to comply with 9 NYCRR §7032.4(d) by making formal grievance forms readily available so that an inmate may file a grievance;
16. to comply with 9 NYCRR §7032.4(i) by ensuring that, within five business days of the receipt of a grievance, the grievance coordinator issues a written determination, a copy of such provided to the inmate;
17. to comply with 9 NYCRR §7032.4(k) by ensuring that, within five business days after receipt of a grievance appeal, the chief administrative officer issues a determination on the appeal and provides a copy of such determination to the inmate; and

18. for such other and further relief as the Court may deem just and proper under the circumstances.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR Sec. 403(b), answering papers, if any, are required to be served at least two days before the return date of this special proceeding. If, however, this Notice of Petition is served at least twelve days before the return date, answering papers, if any, are required to be served at least seven days before the return date.

Petitioner designates Erie County as place of trial. The basis of venue is the place of business of the Respondent.

Dated: Buffalo, New York
September 21, 2009

ANDREW M. CUOMO
ATTORNEY GENERAL OF
THE STATE OF NEW YORK

Attorney for Petitioner

BY:



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STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

**THE NEW YORK STATE
COMMISSION OF CORRECTION,**

Petitioner,

PETITION

-against-

TIMOTHY B. HOWARD, Individually
and in his capacity of Sheriff of
Erie County, New York,

PAID
CASH *NF*

Index No. _____

SEP 22 2009

Respondent.

**ERIE COUNTY
CLERK'S OFFICE**

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The petition of Thomas A. Beilein respectfully alleges:

1. Your Petitioner currently serves, pursuant to Correction Law §41(1), as Chairman of the New York State Commission of Correction (hereinafter "Commission").
2. The grounds for Petitioner's information and the source of his belief as to all matters set forth herein are the papers and documents contained in the Commission's files, personal conversations with Commission staff, information he has obtained from the Erie County Sheriff's Department, and the Commission's investigation into the facts and circumstances involved herewith.
3. The Erie County Holding Center (hereinafter "Holding Center") constitutes a "local correctional facility," as well as a "correctional facility," as those terms are defined by New York State Correction Law §40. Respondent Timothy B. Howard (hereinafter "Howard"), as the Sheriff of Erie County, is charged with the custody of all local correctional facilities within Erie County pursuant to Correction Law §500-c.
4. The Commission, pursuant to Correction Law §45(6), is charged with the duty of promulgating rules and regulations establishing minimum standards for the operation of all correctional facilities in New York State.
5. The Commission's promulgated regulations set forth minimum standards for, among other practices, the issue of inmate personal hygiene products and bedding [9 NYCRR Part 7005], inmate rules of conduct and discipline [9 NYCRR Part 7006], inmate visitation [9 NYCRR

Part 7008], the assignment of inmate housing [9 NYCRR Parts 7013 and 7040], inmate exercise [9 NYCRR Part 7028], and facility grievance programs [9 NYCRR Part 7032].

6. Pursuant to Correction Law §46(4), in any case where a Commission regulation is being or about to be violated, the Commission “shall notify the person in charge or control of the facility of such violation, recommend remedial action, and direct such person to comply with the rule, regulation or law, as the case may be.”
7. By Directive dated February 18, 2009 and pursuant to Correction Law §46(4), the Commission notified Howard of numerous regulation violations at the Holding Center regarding the issue of inmate personal hygiene products and bedding, inmate rules of conduct and discipline, inmate visitation, the assignment of inmate housing, inmate exercise, and facility grievance programs [Exhibit A]. Details of the Directive, including specific regulations and Howard’s manner of non-compliance, are discussed with more specificity below. Such Directive thereafter recommended remedial action, directed Howard to comply with the listed regulations, and required Howard to submit to the Commission, by March 20, 2009, documentation substantiating compliance therewith.
8. By letter dated March 20, 2009, Howard’s Undersheriff, Brian D. Doyle (hereinafter “Doyle”), submitted to the Commission Howard’s response to the Commission’s February 18, 2009 Directive [Exhibit B]. Although discussed in more detail below, Doyle’s response purported to provide documentation demonstrating substantial compliance with the February 18, 2009 Directive.
9. Upon receipt of Doyle’s March 20, 2009 response, Commission staff made two site visits to the Holding Center from March 24-27, 2009, and April 28-May 2, 2009. Thereafter, your Petitioner sent correspondence to Howard on May 22, 2009, which included an assessment of Doyle’s March 20, 2009 response [Exhibit C]. While discussed with more specificity below, the Commission’s May 22, 2009 assessment found that the Holding Center remained deficient in meeting the majority of the regulations cited in the February 18, 2009 Directive.
10. On June 8, 2009, Holding Center Superintendent Robert Koch (hereinafter “Koch”) provided a response to the Commission’s May 22, 2009 response assessment [Exhibit D]. Discussed in more detail below and similar to Doyle’s March 20, 2009 response, Koch purported to demonstrate substantial compliance with the February 18, 2009 Directive.
11. In an effort to gauge compliance with the February 18, 2009 Directive, Commission field staff undertook a monitoring program at the Holding Center, generally consisting of weekly site visits between June 16, 2009 and July 8, 2009, followed by an additional site visits from August 1, 2009 to August 2, 2009, and September 16, 2009 to September 17, 2009. The sole purpose of such monitoring program was to evaluate compliance with the Commission regulations deemed violated in the February 18, 2009 Directive. Although discussed with greater detail below, the results of the monitoring program revealed that the Holding Center generally remained in substantial non-compliance with the majority of the regulations

complained of in the February 18, 2009 Directive.

FACILITY HOLDING AREAS

12. Pursuant to 9 NYCRR §7040.7, the Commission is charged with formulating a Maximum Facility Capacity (hereinafter “MFC”) for each county correctional facility, which shall set forth the maximum number of inmates that may be housed in each individual and multiple occupancy housing unit. Such formulation shall be based, in part, upon the number of “properly equipped” individual and multiple occupancy housing units within the facility. 9 NYCRR §7040.7(b).
13. Upon information and belief, The Erie County Holding Center’s holding areas (Court Hold #1-#7, Isolation #1-#5, M-Intake Pen, F-Holding Pen, M-Holding Pen) are designed for short term holding contemporaneous to inmate intake, booking and screening. Lacking beds, mattresses and the dayroom and shower capabilities required for standard inmate housing, such areas each routinely hold as many as thirty (30) inmates yet each contain only one (1) sink and toilet. As such, these cells and pens are not rated for standard inmate housing per the facility’s November 8, 2006 Commission-issued MFC [Exhibit E].
14. Upon an inmate’s admission, 9 NYCRR §7013.7(a) requires a local correctional facility to immediately perform an initial screening and risk assessment of such inmate. Following completion of the screening and assessment, but prior to determining the inmate’s primary housing assignment, 9 NYCRR §7013.8(a) requires the facility to place such inmate in a housing unit within a housing area designated for classification purposes. For this reason, the Holding Center’s MFC limits the time inmates may be held in the holding areas to twelve (12) hours, where inmates are individually detained, or four (4) hours where more than one inmate is detained in a cell or pen.
15. At the time of the February 18, 2009 Directive, the Commission found that inmates of the Holding Center “are routinely subjected to lengthy stays in the holding areas following the completion of their initial screening and risk assessment instead of being placed in a housing unit designated for classification purposes. As a result, such admitted inmates are denied beds, mattresses, clean bedding, showers, and required personal health care and hygiene items. Additionally, such inmates are denied the benefit of the additional floor space and toilet and sink access that would accompany a proper admission to a standard inmate housing unit.” [Exhibit A, p. 8].
16. Accordingly, the February 18, 2009 Directive ordered and directed Howard “to assign inmates to proper housing in accordance with the limitations and conditions of the Maximum Facility Capacity for the Erie County Holding Center; to wit, inmates may not be detained in the facility’s holding areas for periods longer than that designated in the Commission’s Maximum Facility Capacity.” [Exhibit A, p. 12].
17. By Doyle’s March 20, 2009 response, it was offered that such violations would be remedied

by opening two facility housing units, Alpha Long and Alpha Short, for pre-arraignment housing [Exhibit B, p. 2]

18. Upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit F], inmate Guerhard J. Degraff was arrested and transported to the Holding Center, whereupon he was admitted at 1:06 a.m. on June 7, 2009. Inmate Degraff was not thereafter assigned to a housing unit, according to the unit logbook, until 9:31 p.m. on June 7, 2009. Considering the above, your Petitioner submits that inmate Degraff spent over twenty (20) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.
19. Upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit G], inmate James S. Simmons was arrested and transported to the Holding Center, whereupon he was admitted at 3:23 a.m. on June 17, 2009. Inmate Simmons was not thereafter assigned to a housing unit, according to the unit logbook, until 9:16 p.m. on June 17, 2009. Considering the above, your Petitioner submits that inmate Simmons spent nearly eighteen (18) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.
20. Upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit H], inmate Sarita L. Brown was arrested and transported to the Holding Center, whereupon she was admitted at 2:53 a.m. on June 18, 2009. Inmate Brown was not thereafter assigned to a housing unit, according to the unit logbook, until 6:47 p.m. on June 18, 2009. Considering the above, your Petitioner submits that inmate Brown spent nearly sixteen (16) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.
21. Upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit I], inmate Dennis E. Childs was arrested and transported to the Holding Center, whereupon he was admitted at 6:03 a.m. on May 17, 2009. Inmate Childs was not thereafter assigned to a housing unit, according to the unit logbook, until 8:31 p.m. on May 17, 2009. Considering the above, your Petitioner submits that inmate Childs spent over fourteen (14) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.
22. Upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit J], inmate Gary F. Yetzer was arrested and transported to the Holding Center, whereupon he was admitted at 2:56 a.m. on June 14, 2009. Inmate Yetzer was not thereafter assigned to a housing unit, according to the unit logbook, until 4:35 p.m. on June 14, 2009. Considering

the above, your Petitioner submits that inmate Yetzer spent nearly fourteen (14) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.

23. In addition to the above violations related to the detention of newly admitted inmates, Commission staff discovered violations stemming from the use of the Holding Center's holding areas for the performance of constant supervision, commonly referred to as "suicide watch."
24. Upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit K], inmate Jeannie M. Morrison was placed in Isolation Cell #5, for the purpose of constant supervision, at 4:30 p.m. on July 6, 2009. Such records subsequently indicate that inmate Morrison remained in Isolation Cell #5 until 9:15 p.m. on July 7, 2009. Considering the above, your Petitioner submits that inmate Morrison spent nearly twenty nine (29) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.
25. Similarly, and also upon information and belief, such information and belief based upon Holding Center facility records gathered by Commission staff while undertaking facility monitoring [Exhibit L], inmate Kimberly R. Carmichael was placed in Isolation Cell #5, for the purpose of constant supervision, at 6:30 p.m. on July 7, 2009. Such records subsequently indicate that inmate Morrison remained in Isolation Cell #5 until 9:00 a.m. on July 8, 2009. Considering the above, your Petitioner submits that inmate Morrison spent fourteen and one-half (14½) hours in the Holding Center holding area before being assigned to a housing unit, a violation of both Commission regulations and the Commission Directive dated February 18, 2009.
26. As demonstrated in the above allegations, and contrary to the Commission's Directive dated February 18, 2009, your Petitioner submits that Sheriff Howard, together with the administration and staff of the Erie County Holding Center, has continued to violate Commission regulations relative to the detention of inmates in non-standard facility holding areas, specifically sections 7013.8(a) and 7040.3 of Title 9 NYCRR.

PERSONAL HYGIENE ITEMS AND BEDDING

27. Pursuant to 9 NYCRR §7005.9(a), each county correctional facility must, upon an inmate's admission to a facility, provide such inmate with an issue of clean bedding in good condition.
28. Additionally, 9 NYCRR §7005.6(a) requires that each inmate, upon admission to a county correctional facility, be provided with an issue of personal health care items, including soap, a toothbrush, toothpaste, a drinking cup, toilet paper and a bath towel.
29. At the time of the February 18, 2009 Directive, the Commission found that inmates of the

Holding Center “are denied beds, mattresses, clean bedding, showers, and required personal health care and hygiene items.” [Exhibit A, p. 9].

30. Accordingly, the February 18, 2009 Directive ordered and directed Howard “to provide each inmate, upon admission and at facility expense, with an issue of clean bedding in good condition.” [Exhibit A, p. 12]. Further, the Directive ordered and directed Howard “to provide each inmate, upon admission to the facility and at facility expense, with an issue of personal health care items, including but not limited to soap, a toothbrush, toothpaste, a drinking cup, toilet paper and a bath towel.” [Exhibit A, p. 12].
31. As set forth in Doyle’s March 20, 2009 response, Howard presented that all inmates “remanded to the custody of the Sheriff” are given such personal health care items, as well as an issue of clean bedding [Exhibit B, p. 2-3].”
32. As noted in the Commission’s May 22, 2009 assessment of Doyle’s response, “[d]uring multiple visits to the Erie County Holding Center, Commission staff noted some improvement in providing un-arraigned [sic] prisoners with soap, a toothbrush and toothpaste, a drinking cup, and toilet paper. However such items are not consistently being provided to un-arraigned prisoners. Also, Commission staff noted that un-arraigned prisoners are not provided with a towel.” [Exhibit C, p. 2]. The assessment further noted that “un-arraigned prisoners, while being provided a mattress in their cells, are not provided with bedding.” [Exhibit C, p. 3].
33. In response to the Commission’s May 22, 2009 assessment, Koch’s June 8, 2009 letter indicated that “all inmates, including unarraigned,” would be issued the required personal health care items and bedding [Exhibit D, p.2].
34. Upon information and belief, such information and belief based upon personal observations of Commission staff while evaluating the Holding Center for compliance with the Commission’s February 18, 2009 Directive, inmates admitted to the Holding Center continue to be deprived of essential and required personal hygiene items and bedding.
35. More specifically, the attached affidavits of Commission staff depict specific observations of numerous instances in which admitted inmates of the Holding Center have not been issued a pillow, pillowcase, towel, drinking cup, toothbrush, toothpaste, toilet paper, soap and a full complement of bedding [Exhibits M,N,O,P,Q,R].
36. Upon further information and belief, and contrary to Koch’s June 8, 2009 contention that “all inmates, including unarraigned,” would be provided the required issue of bedding, unarraigned inmates admitted to the Holding Center are deliberately provided an inadequate bedroll that provides only one sheet [Exhibit O, R].
37. Upon information and belief, Holding Center inmates subject to constant observation are routinely deprived of personal hygiene items required by Commission regulation. As set

forth on page 7 of Holding Center Policy #JMD12.11.90, entitled *Constant Observation*, and submitted as part of Doyle's March 20, 2009 response to the Directive [Exhibit S], "[i]nmates in constant observation are allowed undergarments, linens, pillows and property. Property will be stored in bins (totes)."

38. Upon information and belief, such information and belief based upon post orders of the Bravo Constant Observation housing unit of the Holding Center obtained by Commission staff [Exhibit T], "[p]roperty for [inmates is] to be stored in plastic tote bins located in deputy runway. This includes toothbrush, toothpaste + towel. Nothing to be left in unit."
39. Upon information and belief, the "deputy runway," described in the above post order, is an area outside and separate by a locked door from the housing unit, thus inaccessible to the inmates therein. Without access to the bins in the deputy runway, your Petitioner submits that such inmates have neither been "provided" nor "issued" the necessary personal health care items as required by subdivision (a) of 9 NYCRR §7005.6.
40. Lastly, upon information and belief, Holding Center staff remain unwilling to provide and replenish, or unaware of their regulatory duty to provide and replenish, necessary personal hygiene and bedding items to the general inmate population.
41. Such information and belief is based partially on a June 23, 2009 inmate request slip, a copy of which was discovered by Commission staff at the Holding Center on June 26, 2009 [Exhibit U]. Therein, an inmate of the F-East housing unit, together with seven (7) other "co-signing" inmates, requested toothbrushes, toothpaste, and pillows. Evidently unaware of the obligation to issue and replenish such items at facility expense, Holding Center staff's written disposition of the request was to "Buy them on commissary! Pillows already offered on 6/20/09."
42. As demonstrated in the above allegations, and contrary to the Commission's Directive dated February 18, 2009, your Petitioner submits that Sheriff Howard, together with the administration and staff of the Erie County Holding Center, has continued to violate Commission regulations relative to the provision of personal hygiene items and bedding to inmates, specifically sections 7005.6(a) and 7005.9(a) of Title 9 NYCRR.

INMATE EXERCISE

43. 9 NYCRR §7028.2(b) provides that inmates of a county correctional facility are generally entitled to exercise periods in an outdoor exercise area which, at the discretion of the facility, must consist of at least one and one-half (1½) hours during each of five days per week, or at least one (1) hour seven days a week.
44. At the time of the February 18, 2009 Directive, the Commission found that inmates of the Holding Center "are routinely deprived of required outdoor exercise periods." [Exhibit A, p. 11].

45. Accordingly, the February 18, 2009 Directive ordered and directed Howard “to permit all inmates to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR Part 7028.” [Exhibit A, p. 14].
46. As set forth in Doyle’s March 20, 2009 response, Howard presented that “[a]ll inmates are permitted to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR Part 7028.” [Exhibit B, p. 8].” In support of such position, Doyle’s March 20, 2009 response included a copy of the Holding Center’s *Inmate Handbook*, which set forth that “[a]ll inmates in the facility will receive recreation daily.” [Exhibit V, p. 10].
47. As noted in the Commission’s May 22, 2009 assessment of Doyle’s response, “[d]uring the most recent visits to the Erie County Holding Center, Commission staff noted that not all female inmates housed in keeplock status are afforded the opportunity to participate in outdoor exercise. Due to insufficient hours allotted for keeplock exercise, the lack of individual exercise pens and the need to keep separate most inmates in punitive segregation housing, the facility is unable to provide all keeplock inmates the opportunity to participate in outdoor exercise.” [Exhibit C, p. 15].
48. In response to the Commission’s May 22, 2009 assessment, Koch’s June 8, 2009 letter indicated that “[a]ll supervisors are aware that all inmates, including those on keep lock, male and female are permitted to engage in outdoor exercise subject to the limitations of 9 NYCRR, Part 7028.” [Exhibit D, p.7].
49. Upon information and belief, such information and belief based upon copies of facility logbooks obtained by Commission staff while evaluating the Holding Center for compliance with the Commission’s February 18, 2009 Directive, inmates of the Holding Center continue to be deprived of sufficient outdoor exercise periods as required by 9 NYCRR Part 7028.
50. Specifically, your Petitioner’s review of the Holding Center’s *Keep Lock Recreation* logbook between the period of May 10, 2009 and June 14, 2009 [Exhibit W] reveals that inmates are consistently provided exercise periods for a period of less than one hour, to wit:
- May 10, 2009 10:10-11:00
 - May 10, 2009 13:00-13:45
 - May 10, 2009 13:50-14:30
 - May 16, 2009 13:50-14:30
 - May 20, 2009 14:00-14:30
 - May 21, 2009 14:00-14:30
 - May 23, 2009 08:25-08:50
 - May 23, 2009 08:55-09:50
 - May 24, 2009 14:00-14:30
 - May 25, 2009 14:00-14:30
 - May 26, 2009 14:00-14:45
 - May 27, 2009 14:00-14:30

- May 28, 2009 13:45-14:30
- June 1, 2009 13:45-14:30
- June 2, 2009 13:50-14:30
- June 7, 2009 14:00-14:30
- June 12, 2009 13:50-14:30

51. The overwhelming majority of the insufficient exercise periods listed above ended at 14:30 (2:30 p.m.), the cause of which, upon information and belief, is attributed to a scheduled facility lockdown. As published in the Holding Center's *Inmate Handbook*, all inmates are required to lock-in their housing units at specific times, including the duration from 2:30 p.m. to 3:00 p.m. for a shift change and headcount [Exhibit V, p. 23].
52. Upon information and belief, and apart from the above-referenced insufficient exercise periods, your Petitioner submits that Holding Center inmates are sporadically offered no exercise at all in a given day. Such information and belief is based, in part, upon a June 15, 2009 memorandum from Holding Center Sergeant J. Weyand-Garrett to Holding Center Chief M. Reardon [Exhibit X].
53. The memorandum, which purports to document an investigation into the incarceration of inmate Adrienne March, provides that March "expressed complaint regarding her right to one hour of recreation." Further, the memorandum sets forth that "Recreation was being held every three days per Dep. Higgins due to housing arrangements with Alpha, Delta & the minors." Finally, the memorandum details March's recreation schedule, which reflects that she was either provided or refused exercise on only nine (9) days during the twenty (20) day period between May 1 and May 20, 2009.
54. As demonstrated in the above allegations, and contrary to the Commission's Directive dated February 18, 2009, your Petitioner submits that Sheriff Howard, together with the administration and staff of the Erie County Holding Center, has continued to violate Commission regulations relative to inmate exercise, specifically section 7028.2(b) of Title 9 NYCRR.

FACILITY RULES/INMATE DISCIPLINE

55. County correctional facilities are required to implement a system of inmate discipline consistent with the Commission's regulations set forth in Part 7006 of Title 9 NYCRR.
56. 9 NYCRR §7002.9(a) requires a county correctional facility to prepare and distribute to all prisoners, upon admission, a written copy of facility rules and information. Besides the facility rules of conduct, penalties for violations and disciplinary procedures, such copy must provide essential information regarding available health services, exercise, correspondence, visitation, religion, grievances, etc.
57. It is the regulatory duty of the facility's chief administrative officer, pursuant to 9 NYCRR

§7006.3(a), to develop the written rules of inmate conduct. As provided by 9 NYCRR §7006.3(b), such written rules shall include all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures.

58. Upon admission to the facility, 9 NYCRR §7006.3(c) requires that each inmate be provided with a copy of the rules of inmate conduct, with a copy also maintained in the facility law library.
59. 9 NYCRR §7006.7(a) provides that an inmate who threatens the safety, security, and good order of a correctional facility may be immediately confined in a cell or room pending a disciplinary hearing and may be retained in administrative segregation until the completion of the disciplinary process.
60. Within 24 hours of such confinement, 9 NYCRR §7006.7(b) requires that an inmate be provided with a written statement setting forth the reasons for such confinement. Upon receipt of the statement, the inmate shall be provided an opportunity to respond to the statement orally or in writing to the chief administrative officer of the facility.
61. Section 7006.7(c) of Title 9 requires the chief administrative officer of the facility to review any administrative order, within 24 hours of such confinement, to determine if continued confinement is warranted.
62. At the time of the February 18, 2009 Directive, the Commission found that "written rules of inmate conduct either do not exist or are not in sufficient supply for inmate allocation, as such distribution has not occurred since at least October of 2008. While deprived of the written rules of conduct, inmates are nevertheless charged with violations of such rules, and thereafter prosecuted vial inmate disciplinary hearings." Additionally, the Directive expressed that "[i]nmates subject to [administrative] confinement are not provided a written statement setting forth the reasons therefore, nor provided an opportunity to respond to such statement orally or in writing to the chief administrative officer. Further, the facility's chief administrative officer routinely fails to review any such administrative confinement within 24 hours to determine if continued confinement is warranted." [Exhibit A, p. 9-10].
63. Accordingly, the February 18, 2009 Directive ordered and directed Howard "to prepare and distribute to each prisoner, upon admission, a written copy of the facility rules and information," "to develop written rules of inmate conduct, which shall include all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures," and to "provide a copy of the written rules of inmate conduct to each inmate upon admission to the facility." Further, Howard was ordered and directed "to provide any inmate so administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer."

[Exhibit A, p. 13]. Lastly, Howard was ordered and directed “to conduct a review of any such administrative segregation within 24 hours of confinement, by the chief administrative officer, to determine if continued confinement is warranted.” [Exhibit A, p. 12-13].

64. As set forth in Doyle’s March 20, 2009 response, Howard presented that, contrary to the allegations of the Directive, “[a]ll inmates, upon remand to the Holding Center, receive and sign for an Inmate Handbook. Your agency’s finding that inmates have not received these handbooks since October 2008 is untrue.” Additionally, Doyle’s response indicates that the Holding Center’s Policy #JMD04.02.06, entitled *Administrative Segregation Pre-Hearing Detention*, “requires the Sheriff’s Office to provide any inmate administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer.” [Exhibit B, p. 4-5]. Doyle’s response further presents that the above facility policy provides that “the chief administrative officer or designee reviews any administrative segregation within 24 hours and determine if it is warranted.” [Exhibit B, p. 5].
65. Upon information and belief, such information and belief based upon the observations of Commission staff, Holding Center policies and procedures, and inmate disciplinary records obtained by Commission staff while evaluating the Holding Center for compliance with the Commission’s February 18, 2009 Directive, the administration of the Holding Center continues to operate the inmate disciplinary system in violation of Commission regulations, as set forth in Part 7006 of Title 9 NYCRR.
66. Upon information and belief, such information and belief based upon the attached affidavits of Commission staff Cynthia Diaz [Exhibit R] and Erin Purdy [Exhibit Q], inmates continue to be deprived of copies of the facility rules and information (*Inmate Handbook*) which, pursuant to 9 NYCRR §§7002.9(a) and 7006.3(c), must be provided every inmate upon admission.
67. Upon information and belief, based upon the attached affidavit of Cynthia Diaz [Exhibit R], Holding Center records provide no evidence or substantiation that inmates who are administratively segregated pending a disciplinary hearing receive an “Administrative Segregation Order-Keep Lock Pending Discipline Hearing,” nor any other written statement setting forth the reasons for such confinement. Also upon information and belief, based further upon the affidavit of Ms. Diaz, Holding Center records provide no evidence or substantiation that inmates are provided an opportunity to respond to any such order, nor does there exist a record of any such response by an inmate.
68. Your Petitioner submits that the absence of such records is a consequence of the Holding Center’s relevant policy. While Doyle’s March 20, 2009 response is correct in its allegation that the Holding Center’s Policy #JMD04.02.06 “requires the Sheriff’s Office to provide any inmate administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the

inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer” [Exhibit Y], it should be noted that such provision is contained solely in the “Policy” section.

69. A careful review of the “Procedure” section of the Holding Center’s Policy #JMD04.02.06 reveals no mention of providing the required written statement to an administratively segregated inmate within 24 hours, or of such an inmate’s opportunity to respond to the chief administrative officer. Consequently, your Petitioner submits that the policy provides no direction as to who must provide the required inmate notice, when such notice must be provided, and in what manner an inmate would be able to respond. Lacking such direction, your Petitioner submits that, upon information and belief and as evidenced by the Holding Center’s records, said requirements are not accomplished.
70. As set forth above, section 7006.7(c) of Title 9 requires the chief administrative officer of the facility to review any administrative confinement within 24 hours of such confinement in order to determine if continued confinement is warranted.
71. Upon information and belief, based upon inmate disciplinary records obtained by Commission staff while evaluating the Holding Center for compliance with the Commission’s February 18, 2009 Directive, such reviews have either not been conducted, or have been made beyond the 24 hour period allowed by Commission regulation.
72. Upon information and belief, such information and belief based upon a Holding Center “Administrative Segregation Order – Keep Lock Pending Discipline Hearing” record gathered by Commission staff while undertaking facility monitoring [Exhibit Z], inmate Terry Weilbon was initially administratively segregated by such order at 9:55 a.m. on June 20, 2009. As further indicated by the order, at no time was such confinement reviewed and continued by the chief administrative officer prior to its discovery by Commission staff on June 23, 2009 [Exhibit R], a period well in excess of the 24 hours allowed by regulation.
73. Upon information and belief, such information and belief based upon an Erie County Sheriff’s Office Incident Report dated June 14, 2009 [Exhibit AA], a Deputy Carney witnessed inmates Quincy Balance, Rayshawn Miller, Antoine Lawrence and Lemuele Jackson “shoving pushing and harassing” inmate Norman Lindenau at 8:40 a.m. on June 14, 2009. Consequently, the offending inmates were immediately confined and thereafter “moved to Echo short and placed on Keep lock pending hearing status.”
74. Upon information and belief, such information and belief based upon a Holding Center “Administrative Segregation Order – Keep Lock Pending Discipline Hearing” record gathered by Commission staff while undertaking facility monitoring [Exhibit BB], the administrative segregation of inmate Quincy Balance was not reviewed and continued by the chief administrative officer, Deputy Superintendent Barbara Leary, until 9:40 a.m. on June 15, 2009. As documented, such review was not conducted within the regulatory 24 hour period, commenced by administrative confinement at approximately 8:40 a.m. on June 14,

2009.

75. Upon information and belief, such information and belief based upon a Holding Center “Administrative Segregation Order – Keep Lock Pending Discipline Hearing” record gathered by Commission staff while undertaking facility monitoring [Exhibit CC], the administrative segregation of inmate Rayshawn Miller was not reviewed and continued by the chief administrative officer, Deputy Superintendent Barbara Leary, until 9:40 a.m. on June 15, 2009. As documented, such review was not conducted within the regulatory 24 hour period, commenced by administrative confinement at approximately 8:40 a.m. on June 14, 2009.
76. Upon information and belief, such information and belief based upon a Holding Center “Administrative Segregation Order – Keep Lock Pending Discipline Hearing” record gathered by Commission staff while undertaking facility monitoring [Exhibit DD], the administrative segregation of inmate Antoine Lawrence was not reviewed and continued by the chief administrative officer, Deputy Superintendent Barbara Leary, until 9:04 a.m. on June 15, 2009. As documented, such review was not conducted within the regulatory 24 hour period, commenced by administrative confinement at approximately 8:40 a.m. on June 14, 2009.
77. Upon information and belief, such information and belief based upon a Holding Center “Administrative Segregation Order – Keep Lock Pending Discipline Hearing” record gathered by Commission staff while undertaking facility monitoring [Exhibit EE], the administrative segregation of inmate Lemuele Jackson was not reviewed and continued by the chief administrative officer, Deputy Superintendent Barbara Leary, until 9:03 a.m. on June 15, 2009. As documented, such review was not conducted within the regulatory 24 hour period, commenced by administrative confinement at approximately 8:40 a.m. on June 14, 2009.
78. Lastly, and upon information and belief, such information and belief based upon a Holding Center “Administrative Segregation Order – Keep Lock Pending Discipline Hearing” record gathered by Commission staff while undertaking facility monitoring [Exhibit FF], inmate Nate Myers was initially administratively segregated by such order at 7:37 p.m. on May 25, 2009. As further indicated by the order, such confinement was reviewed and discontinued by the chief administrative officer, Captain Jeffrey Hartman at 7:30 a.m. on May 26, 2009. Remarkably, the same order was reviewed and continued by Deputy Superintendent Barbara Leary at 10:15 a.m. on May 26, 2009 [Exhibit GG]. While neither review exceeded the 24 hour limit imposed by regulation, your Petitioner submits that the above exemplifies the disordered system of inmate discipline that continues to plague the Holding Center, resulting in the regulatory violations set forth above.
79. As demonstrated in the above allegations, and contrary to the Commission’s Directive dated February 18, 2009, your Petitioner submits that Sheriff Howard, together with the administration and staff of the Erie County Holding Center, has continued to violate

Commission regulations relative to inmate discipline, specifically sections 7006.7(b) and 7006.7(c) of Title 9 NYCRR.

INMATE GRIEVANCE PROGRAM

80. County correctional facilities are required to establish, implement and maintain a formal inmate grievance system consistent with Part 7032 of Title 9 NYCRR.
81. As required by 9 NYCRR §7032.4(a), any inmate incarcerated in a local correctional facility shall be provided access to the facility's grievance program which, as mandated by 9 NYCRR §7032.4(c), includes advising every such inmate in writing as to the availability of grievance forms upon admission.
82. Consistent with the above regulations, 9 NYCRR §7032.4(d) requires facility staff to make grievance forms "readily available" to inmates so that an inmate may file a grievance.
83. Within five (5) business days of the receipt of an inmate grievance, 9 NYCRR §7032.4(i) requires a facility grievance coordinator to render and issue a written determination, a copy of which must be provided to the inmate grievant.
84. Should the grievant wish to appeal the grievance coordinator's determination, 9 NYCRR §7032.4(k) allows the chief administrative officer a maximum of five (5) business days in which to render and issue a written determination, a copy of which must be provided to the inmate grievant.
85. At the time of the February 18, 2009 Directive, the Commission found that "the facility's failure to provide grievance forms on the housing units ... has denied the inmates of the Erie County Holding Center sufficient access to the facility's grievance program by not making such program and forms readily available." [Exhibit A, p. 10].
86. As further set forth in the Directive, the Commission found, "in instances where access to the grievance program is provided, the facility's administration routinely fails to meet the regulatory time requirements. Specifically, the facility's grievance coordinator habitually fails to render a written determination within five business days of the receipt of a grievance. Further, the chief administrative officer customarily fails to issue a determination of any appeal to the grievance coordinator's decision within five business days." [Exhibit A, p. 10].
87. Accordingly, the February 18, 2009 Directive ordered and directed Howard "to make formal grievance forms readily available so that an inmate may file a grievance," "to ensure that, within five business days of the receipt of a grievance, the grievance coordinator issues a written determination, a copy of such provided to the inmate," and "to ensure that, within five business days after receipt of a grievance appeal, the chief administrative officer issues a determination on the appeal and provides a copy of such determination to the inmate." [Exhibit A, p. 14].

88. As set forth in Doyle's March 20, 2009 response, Howard presented that a "revised Inmate Grievance Program has been developed" which is reflected in a revised Holding Center Policy #JMD04.02.05, as well as provision of the *Inmate Handbook* to admitted inmates, "which outlines the inmate grievance process." [Exhibit B, p. 8].
89. Your Petitioner's review of the Holding Center *Inmate Handbook*, attached to Doyle's March 20, 2009 response, reveals instructions to inmates that "[g]rievance forms are available from your housing unit officer." [Exhibit V, p. 15].
90. Your Petitioner's review of Holding Center Policy #JMD04.02.05, attached to Doyle's March 20, 2009 response, reveals that a "supply of Inmate Grievance Forms and supplements shall be maintained in the housing area deputy's desk on each housing area." [Exhibit HH, p. 1].
91. Upon information and belief, such information and belief based upon the observations of Commission staff, inmate grievance records obtained by Commission staff while evaluating the Holding Center for compliance with the Commission's February 18, 2009 Directive, and inmate grievance records submitted for appeal to the Commission, the administration of the Holding Center continues to operate the inmate grievance system in violation of Commission regulations as set forth in Part 7032 of Title 9 NYCRR.
92. Upon information and belief and contrary to direction set forth in the above-referenced Holding Center policy and *Inmate Handbook*, your Petitioner submits that inmate grievance forms have not been made consistently available to all inmates. Such information and belief is based upon the observations and affidavits of two Commission staff, who found inmate grievance forms to be absent and unavailable from two Holding Center housing units on July 2, 2009 [Exhibits O, II].
93. Upon information and belief, such information and belief based upon inmate grievance records obtained from the Holding Center [Exhibit JJ], inmate Thamud Eldridge filed Grievance #09-G-018 on May 6, 2009, which was forwarded to the grievance coordinator on May 8, 2009. Nevertheless, the grievance coordinator did not render a written decision until May 18, 2009, well past the five (5) business day limit imposed by 9 NYCRR §7032.4(i).
94. Upon information and belief, such information and belief based upon inmate grievance records obtained from the Holding Center [Exhibit KK], inmate Thamud Eldridge filed Grievance #09-G-019 on May 6, 2009, which was forwarded to the grievance coordinator on May 8, 2009. Nevertheless, the grievance coordinator did not render a written decision until May 18, 2009, well past the five (5) business day limit imposed by 9 NYCRR §7032.4(i).
95. Upon information and belief, such information and belief based upon inmate grievance records obtained from the Holding Center [Exhibit LL], inmate Kevin Anderson filed Grievance #09-G-022 on April 14, 2009. Following the grievance coordinator's written

determination, dated April 15, 2009, Anderson expressed his desire to further appeal on April 15, 2009. Nevertheless, the chief administrative officer did not render a written determination until May 18, 2009, well past the five (5) business day limit imposed by 9 NYCRR §7032.4(k).

96. Upon information and belief, such information and belief based upon inmate grievance records obtained from the Holding Center [Exhibit MM], inmate Norman Caraway filed Grievance #09-G-037 on June 13, 2009. Following the grievance coordinator's written determination, dated June 22, 2009, Caraway expressed his desire to further appeal on June 29, 2009. Nevertheless, the chief administrative officer did not render a written determination until July 13, 2009, well past the five (5) business day limit imposed by 9 NYCRR §7032.4(k).
97. Upon information and belief, such information and belief based upon inmate grievance records obtained from the Holding Center [Exhibit NN], inmate Shannon Davis filed Grievance #09-G-031 on June 3, 2009. Following the grievance coordinator's written determination, dated June 9, 2009, Davis expressed her desire to further appeal on June 9, 2009. Nevertheless, the chief administrative officer did not render a written determination until June 24, 2009, well past the five (5) business day limit imposed by 9 NYCRR §7032.4(k).
98. Finally, upon information and belief, such information and belief based upon inmate grievance records obtained from the Holding Center [Exhibit OO], inmate Jerry Ridgeway filed Grievance #09-G-017 on April 2, 2009. After acknowledging receipt as the grievance coordinator on April 3, 2009, Deputy Superintendent Barbara Leary rendered both an undated determination as the grievance coordinator and an April 7, 2009 determination as the chief administrative officer. Your Petitioner submits that such action by Leary denied grievant Ridgeway any avenue to appeal to the facility's chief administrative officer, as is guaranteed by 9 NYCRR §7032.4(k).
99. As demonstrated in the above allegations, and contrary to the Commission's Directive dated February 18, 2009, your Petitioner submits that Sheriff Howard, together with the administration and staff of the Erie County Holding Center, has continued to violate Commission regulations relative to the inmate grievance program, specifically sections 7032.4(a), 7032.4(d), 7032.4(i) and 7032.4(k) of Title 9 NYCRR.

INMATE VISITATION

100. Pursuant to 9 NYCRR §7008.3, a local correctional facility must establish and publish a schedule of visits to ensure that each inmate receives at least two (2) visits totaling at least two (2) hours per week. Further, 9 NYCRR §7008.5 provides that any person who presents adequate proof as to his or her identity shall be permitted to visit an inmate.
101. At the time of the February 18, 2009 Directive, the Commission found that "as presently

established and operated, the visitation system employed by the Erie County Holding Center is insufficient to meet the requirements set forth in 9 NYCRR Part 7008.” [Exhibit A, p. 9].

102. Accordingly, the February 18, 2009 Directive ordered and directed Howard to “provide each inmate of the Erie County Holding Center an opportunity for two hours of visitation each week, with each visit lasting at least 30 minutes,” to “establish and publish a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week,” to “permit any person who presents adequate proof of identity, with the inmate’s consent, to visit such inmate, subject to the limitations of 9 NYCRR Part 7008.,” and to “refrain from denying inmate visitation to prospective visitors on the sole basis of the inability to produce documented evidence of a current address.” [Exhibit A, p. 13].
103. As set forth in Doyle’s March 20, 2009 response, Howard developed and implemented Holding Center Policy #JMD10.06.00, entitled *Inmate Visitation*, “which complies with the Directive and instruction from Commission staff” with regard to providing each inmate of the Holding Center the opportunity for two (2) hours of visitation each week [Exhibit B, p. 6].
104. With regard to the Directive’s issues relative to the establishment and publication of a schedule of visits and requiring prospective visitors to show proof of address, Doyle’s response indicated that the above revised policy “complies with this directive.”
105. Upon information and belief, such information and belief based upon the observations of Commission staff, Holding Center policies and procedures, and visitation records obtained by Commission staff while evaluating the Holding Center for compliance with the Commission’s February 18, 2009 Directive, the administration of the Holding Center continues to operate the system of inmate visitation in violation of Commission regulations as set forth in Part 7008 of Title 9 NYCRR.
106. Upon information and belief, such information and belief based upon Holding Center Policy #JMD10.06.00, entitled *Inmate Visitation* [Exhibit PP], the weekly schedule for inmate visitation is from Saturday through Wednesday, from 7:00 a.m. to 2:30 p.m.
107. Also upon information and belief, such information and belief also based upon Holding Center Policy #JMD10.06.00, inmate visitation is not conducted on holidays. Based upon your Petitioner’s review of such policy, there includes no provision or procedure to compensate for such cancelled visitation later in the week.
108. While a definition for “holiday” is not provided in the policy, it is submitted, upon information and belief, that inmate visitation was not offered at the Holding Center on May 25, 2009 (Memorial Day) and July 4, 2009 (Independence Day). Also upon information and belief, additional visiting hours were not offered to inmates during the weeks of such holidays to compensate for the cancellations.

109. As set forth above, 9 NYCRR §7008.3 requires the Holding Center to establish a schedule of visitation that provides each inmate an opportunity for two (2) hours of visitation a week. The Commission's regulations do not provide an exception for weeks which contain a holiday, nor is any other exception therein allowed.
110. While the Commission is still evaluating whether the Holding Center's schedule of 37½ hours of weekly visitation is sufficient to provide each inmate two (2) hours of weekly visitation, your Petitioner submits that such a schedule is rendered insufficient each and every time visitation is cancelled for a holiday. Based upon the Holding Center's current five day per week schedule, cancelling just one day for a holiday decreases an inmate's opportunity for visitation by twenty (20%) percent.
111. With respect to visitor identification, your Petitioner notes that Holding Center Policy #JMD10.06.00, entitled *Inmate Visitation*, provides that any prospective visitor "must present proper picture identification before being allowed a visit," but provides no requirement that such identification contain a current address. Identification accepted per the policy includes a driver's license, a New York State Identification Card, a Social Services Card, a United States Military identification card, or a passport [Exhibit PP].
112. Despite such policy and Commission regulation requiring only that prospective visitors prove their identity [9 NYCRR §7008.5], visitors and Holding Center staff have been instructed, upon information and belief, that only identification containing a current address will be acceptable. Such information and belief is based upon Holding Center Visiting Procedures distributed to visitors [Exhibit QQ], a sign posted in the Holding Center visitation lobby [Exhibit RR], March 9 and March 13, 2009 memoranda from Deputy Superintendent Barbara Leary [Exhibit SS], and a March 3, 2009 memorandum from Superintendent Donald J. Livingston [Exhibit TT], all as provided in support of Doyle's March 20, 2009 response to the Directive.
113. In addition to contradicting Commission regulations set forth in 9 NYCRR §7008.5, your Petitioner submits that the Holding Center policy and subsequent administrative direction contradict each other. While the policy specifically lists a Social Services Card, military identification and passports as acceptable forms of identification, not one of these, upon information and belief, provides the holder's address thereon, rendering the same unacceptable per subsequent administrative direction.
114. As demonstrated in the above allegations, and contrary to the Commission's Directive dated February 18, 2009, your Petitioner submits that Sheriff Howard, together with the administration and staff of the Erie County Holding Center, has continued to violate Commission regulations relative to inmate visitation, specifically sections 7008.3(a), 7008.3(b), 7008.5(a) and 7008.5(b) of Title 9 NYCRR.

REQUESTED RELIEF

115. As thoroughly submitted above, Erie County Sheriff Timothy B. Howard, as custodian of the Erie County Holding Center, has continued to violate New York State Commission of Correction regulations with respect to the detention of inmates in non-standard facility holding areas, the provision of personal hygiene items and bedding to inmates, the provision of inmate exercise, and the establishment and maintenance of inmate discipline, grievance and visitation programs. Further, such regulatory violations have continued since and despite the February 18, 2009 issuance of a Directive to Sheriff Howard by the Commission of Correction, which notified Howard of the violations, recommended remedial action and directed compliance with such regulations.
116. Upon a sheriff's continued failure to comply with a regulation following Commission Directive, Correction Law §46(4) provides that the Commission "may apply to the supreme court for an order directed to such person requiring compliance with such rule, regulation or law."
117. Lastly, your Petitioner respectfully requests, considering the Commission's statutory interest in assuring that the Erie County Holding Center is a safe, stable and humane correctional facility, together with the Commission's preference over all other cases, except habeas corpus proceedings before this Court [Correction Law §48], that the Court schedule and issue a determination in this matter at its earliest convenience.

WHEREFORE, your Petitioner prays for an Order, pursuant to Correction Law §46(4), directing the Respondent, Erie County Sheriff Timothy B. Howard, as follows:

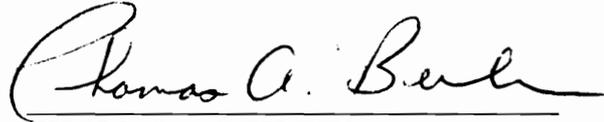
1. to comply with 9 NYCRR §7040.3 by assigning inmates to proper housing in accordance with the limitations and conditions of the Maximum Facility Capacity for the Erie County Holding Center; to wit, inmates may not be detained in the facility's holding areas for periods longer than that designated in the Commission's Maximum Facility Capacity;
2. to comply with 9 NYCRR §7005.6(a) by providing each inmate, upon admission to the facility and at facility expense, with an issue of personal health care items, including but not limited to soap, a toothbrush, toothpaste, a drinking cup, toilet paper and a bath towel;
3. to comply with 9 NYCRR §7005.9(a) by providing each inmate, upon admission and at facility expense, with an issue of clean bedding in good condition;
4. to comply with 9 NYCRR §7013.8(a) by conducting an initial screening and risk assessment of each inmate upon admission, and upon completion promptly placing such inmate in a housing unit designated for classification purposes;
5. to comply with 9 NYCRR §7002.9(a) by preparing and distributing to each prisoner, upon admission, a written copy of the facility rules and information;

6. to comply with 9 NYCRR §7006.3(a) and (b) by developing written rules of inmate conduct, which shall include all chargeable offenses, the range of punishments that may be imposed for each violation, and a detailed description and an explanation of the facility's disciplinary procedures;
7. to comply with 9 NYCRR §7006.3(c) by providing a copy of the written rules of inmate conduct to each inmate upon admission to the facility;
8. to comply with 9 NYCRR §7006.7(b) by providing an inmate administratively segregated pending a disciplinary hearing, within 24 hours of such confinement, a written statement setting forth the reasons for such confinement, to which the inmate shall be provided an opportunity to respond orally or in writing to the chief administrative officer;
9. to comply with 9 NYCRR §7006.7(c) by conducting a review of any such administrative segregation within 24 hours of confinement, by the chief administrative officer, to determine if continued confinement is warranted;
10. to comply with 9 NYCRR §7008.3(a) by providing each inmate of the Erie County Holding Center an opportunity for two hours of visitation each week, with each visit lasting at least 30 minutes;
11. to comply with 9 NYCRR §7008.3(b) by establishing and publishing a schedule of visits to ensure that each inmate has the opportunity for at least two visits per week;
12. to comply with 9 NYCRR §7008.5(a) by permitting any person who presents adequate proof of identity, with the inmate's consent, to visit such inmate, subject to the limitations of 9 NYCRR Part 7008;
13. to comply with 9 NYCRR §7028.2(b) by permitting all inmates to engage in outdoor exercise consistent with and subject to the limitations of 9 NYCRR Part 7028;
14. to comply with 9 NYCRR §7032.4(a) by providing any inmate incarcerated in the Erie County Holding Center access to the facility's grievance program;
15. to comply with 9 NYCRR §7032.4(d) by making formal grievance forms readily available so that an inmate may file a grievance;
16. to comply with 9 NYCRR §7032.4(i) by ensuring that, within five business days of the receipt of a grievance, the grievance coordinator issues a written determination, a copy of such provided to the inmate;
17. to comply with 9 NYCRR §7032.4(k) by ensuring that, within five business days after receipt of a grievance appeal, the chief administrative officer issues a determination on the appeal

and provides a copy of such determination to the inmate; and

18. for such other and further relief as the Court may deem just and proper under the circumstances.

Dated: September 21, 2009
Buffalo, New York

A handwritten signature in black ink, reading "Thomas A. Beilein". The signature is written in a cursive style with a large initial "T" and a long horizontal flourish at the end.

THOMAS A. BEILEIN
Commissioner of the New York State
Commission of Correction
Petitioner

VERIFICATION

STATE OF NEW YORK
CITY OF BUFFALO
COUNTY OF ERIE

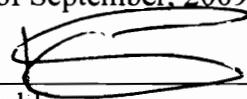
Thomas A. Beilein, being duly sworn, states that he is the Commissioner of the New York State Commission of Correction, the Petitioner in this action, and that he is acquainted with the facts underlying this proceeding; that he has read the Petition herein and understands the contents thereof; that the same is true to my knowledge, and to the matters alleged upon information and belief, I believe those matters to be true.

This verification is made under CPLR Sec. 3020(d) by deponent because the petitioner is the State of New York and/or a governmental subdivision of the State of New York, and your deponent is acquainted with the facts.



THOMAS A. BEILEIN

Sworn to before me this
21st day of September, 2009



Notary Public

KENNETH S. PETERS
Notary Public, State of New York
No. 01PE6122194
Qualified in Erie County
Commission Expires 2/3/13